

For the reasons set forth in the preamble, parts 80 and 86 of title 40, of the Code of Federal Regulations are amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 is revised to read as follows:

Authority: Secs. 114, 202(l), 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7521(l), 7545 and 7601(a)).

2. Section § 80.2 is amended by revising paragraph (d) to read as follows:

§ 80.2 Definitions.

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(d) Previously certified gasoline, or PCG, means gasoline or RBOB that previously has been included in a batch for purposes of complying with the standards in Subparts D, E, H, and I, as appropriate.

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3. Section § 80.46 is amended by revising paragraphs (e) and (h) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

(e) Benzene. (1) Benzene content shall be determined using ASTM standard method D-3606-99, entitled “Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography”; except that

(2) Instrument parameters must be adjusted to ensure complete resolution of the benzene, ethanol and methanol peaks because ethanol and methanol may cause interference with ASTM standard method D-3606-99 when present.

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(h) Incorporations by reference. ASTM standard methods D 2622-98, D 3246-96, D 3606-99, D 1319-93, D 4815-93, and D 86-90 with the exception of the degrees Fahrenheit figures in Table 9 of D 86-90, are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 C.F.R. part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE-131), room M-1500, U.S. Environmental Protection Agency, Docket No. A-97-03, 401 M Street, SW, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

4. Subpart I is added to read as follows:

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§ 80.590 Who must register with EPA under the benzene program?

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§ 80.600 What gasoline is subject to the benzene standards and requirements?

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§ 80.615 What requirements apply to butane blenders?

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§ 80.625 What requirements apply to California gasoline?

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Subpart I – Gasoline Benzene

General Information

§ 80.580-80.585 [Reserved]

§ 80.590 Who must register with EPA under the benzene program?

(a) Refiners and importers who are registered by EPA under § 80.76 are deemed to be registered for purposes of this subpart.

(b) Refiners and importers subject to the standards in § 80.595 who are not registered by EPA under § 80.76 must provide to EPA the information required by § 80.76 by October 1, 2001,

or not later than three months in advance of the first date that such person produces or imports gasoline, whichever is later.

Gasoline Benzene Standards

§ 80.595 What are the gasoline benzene standards for refiners and importers?

(a) (1) The refinery or importer annual average gasoline benzene standard is the baseline benzene level for that refinery or importer as determined at § 80.695.

(2) A refinery or importer has a separate annual average gasoline benzene standard for each of the following types of gasoline produced at that refinery or imported:

- (i) Reformulated gasoline;
- (ii) Conventional gasoline.

(b)(1) The annual average gasoline benzene standard is the maximum average benzene level allowed for gasoline produced at a refinery or imported by an importer during each calendar year starting January 1, 2002. Refiners who have chosen, under Subpart E, to comply with the requirements of Subpart E on an aggregate basis, must comply with the requirements of this Subpart on the same aggregate basis.

(2) The benzene standard and all compliance calculations for benzene under this subpart are in percent by volume (vol%) and volumes are in gallons.

(3) The averaging period is January 1 through December 31 of each year.

(4) The standards under this paragraph (a) shall be met by the importer for all imported gasoline, except gasoline imported as Certified Benzene-FRGAS under § 80.810.

(5) The annual average benzene level is calculated in accordance with § 80.605.

§ 80.600 What gasoline is subject to the benzene standards and requirements?

For the purpose of this subpart, all reformulated gasoline, conventional gasoline and RBOB, collectively called “gasoline” unless otherwise specified, is subject to the standards and requirements under this subpart, as applicable, with the following exceptions:

(a) Gasoline that is used to fuel aircraft, racing vehicles or racing boats that are used only in sanctioned racing events, provided that:

(1) Product transfer documents associated with such gasoline, and any pump stand from which such gasoline is dispensed, identify the gasoline either as gasoline that is restricted for use in aircraft, or as gasoline that is restricted for use in racing motor vehicles or racing boats that are used only in sanctioned racing events;

(2) The gasoline is completely segregated from all other gasoline throughout production, distribution and sale to the ultimate consumer; and

(3) The gasoline is not made available for use as motor vehicle gasoline, or dispensed for use in motor vehicles, except for motor vehicles used only in sanctioned racing events.

(b) Gasoline that is exported for sale outside the U.S.

(c) Gasoline designated as California gasoline under § 80.625, and used in California.

(4) For RFG, the volume of RFG that exceeds the annual average volume of RFG produced during the 1998-1999 baseline years.

§ 80.605 How is the annual refinery or importer average benzene level determined?

(a) The annual refinery or importer average gasoline benzene level is calculated as follows:

$$B_a = \frac{\sum_{i=1}^n (V_i \times B_i)}{\sum_{i=1}^n V_i}$$

Where:

- B_a = The refinery or importer annual average benzene value, as applicable.
- V_i = The volume of applicable gasoline produced or imported in batch i.
- B_i = The benzene content of batch i determined under § 80.730.
- n = The number of batches of gasoline produced or imported during the averaging period.
- i = Individual batch of gasoline produced or imported during the averaging period.

(b) The annual average calculation specified in paragraph (a) of this section shall be completed separately for each type of gasoline specified at 80.595(a)(2).

(c) All annual refinery or importer average calculations shall be conducted to two decimal places.

(d) A refiner or importer may include oxygenate added downstream from the refinery or import facility when calculating the benzene content, provided the following requirements are met:

(1) For oxygenate added to conventional gasoline, the refiner or importer must comply with the requirements of § 80.101(d)(4)(ii).

(2) For oxygenate added to RBOB, the refiner or importer must comply with the requirements of § 80.69(a).

(e) Refiners and importers must exclude from compliance calculations all of the following:

- (1) Gasoline that was not produced at the refinery;
- (2) In the case of an importer, gasoline that was imported as Certified Benzene-FRGAS under § 80.810;
- (3) Blending stocks transferred to others;
- (4) Gasoline that has been included in the compliance calculations for another refinery or importer; and
- (5) Gasoline exempted from standards under § 80.600.

(f) A refiner or importer may exceed its refinery or importer annual average benzene standard specified in §80.595, separately for RFG and CG, for a given averaging period, creating a compliance deficit, provided that in the calendar year following the year the standard is not met, the refinery or importer shall:

(1) Achieve compliance with the refinery or importer annual average benzene standard specified in §80.595; and

(2) Use additional benzene credits sufficient to offset the compliance deficit of the

previous year.

§ 80.610 What requirements apply to oxygenate blenders?

Oxygenate blenders who blend oxygenate into gasoline downstream of the refinery that produced the gasoline or the import facility where the gasoline was imported, are not subject to the requirements of this subpart applicable to refiners for this gasoline.

§ 80.615 What requirements apply to butane blenders?

Butane blenders who blend butane into gasoline downstream of the refinery that produced the gasoline or the import facility where the gasoline was imported, are not subject to the requirements of this subpart applicable to refiners for this gasoline.

§ 80.620 [Reserved]

§ 80.625 What requirements apply to California gasoline?

(a) Definition. For purposes of this subpart “California gasoline” means any gasoline designated by the refiner or importer as for use in California.

(b) California gasoline exemption. California gasoline that complies with all the requirements of this section is exempt from all other provisions of this subpart.

(c) Requirements for California gasoline. (1) Each batch of California gasoline must be designated as such by its refiner or importer;

(2)Reserved.

(3) Designated California gasoline must ultimately be used in the State of California and not used elsewhere;

(4) In the case of California gasoline produced outside the State of California, the transferors and transferees must meet the product transfer document requirements under § 80.81(g); and

(5) Gasoline that is ultimately used in any part of the United States outside of the State of California must comply with the standards and requirements of this subpart, regardless of any designation as California gasoline.

(d) Use of California test methods and off site sampling procedures. In the case of any gasoline that is not California gasoline and that is either produced at a refinery located in the State of California or is imported from outside the United States into the State of California, the refiner or importer may, with regard to such gasoline:

(1) Use the sampling and testing methods approved in Title 13 of the California Code of Regulations instead of the sampling and testing methods required under § 80.730; and

(2) Determine the benzene content of gasoline at off site tankage as permitted in § 80.81(h)(2).

§ 80.635-80.685 [Reserved]

Baseline Determination

§ 80.690 How does a refiner or importer apply for a benzene baseline?

(a)(1) A refiner or importer must submit an application to EPA which includes the information required under paragraph (c) of this section no later than June 30, 2001.

(2) Any refinery which was not in operation during 2001, or any importer which was not in business during 2001, must submit an application to EPA which includes the applicable information required under paragraph (c) of this section no later than 6 months prior to the introduction of gasoline into commerce.

(b) The benzene baseline request must be sent to: U.S. EPA, Attn: Benzene Program (6406J), 401 M Street SW, Washington, DC 20460. For commercial (non-postal) delivery: U.S. EPA, Attn: Benzene Program, 501 3rd Street NW, Washington, DC 20001.

(c) The benzene baseline application must include the following information:

(1) A listing of the names and addresses of all refineries owned by the company for which the refiner is applying for a benzene baseline, or the name and address of the importer applying for a benzene baseline.

(2)(i) The annual average benzene level for each type of gasoline, per 80.595(a)(2), produced in 1998-1999 for each refinery for which the refiner is applying for a benzene baseline, or the annual average gasoline benzene baseline for gasoline imported in 1998-1999.

(ii) Calculation of the average benzene levels under this paragraph shall be in accordance with § 80.695.

(iii) For those with insufficient data pursuant to § 80.705, a statement that the refinery's or importer's baseline will be the default baseline specified at 80.705(b).

(3) A letter signed by the president, chief operating or chief executive officer, of the company, or his/her delegate, stating that the information contained in the benzene baseline determination is true to the best of his/her knowledge.

(4) Name, address, phone number, facsimile number and E-mail address of a company contact person.

(5) The following information for each batch of gasoline produced or imported in 1998-1999, separated by type of gasoline as listed at 80.585(a)(2):

(i) Batch number assigned to the batch under § 80.65(d) or § 80.101(i);

(ii) Volume; and

(iii) Benzene content.

(d) Foreign refiners must follow the procedures specified in § 80.810(b) to establish individual benzene baseline values for a foreign refinery.

(e) Within 120 days of receipt of an application under this section, EPA will notify the refiner of approval of the refinery's baseline or of any deficiencies in the application.

(f) If at any time the baseline submitted in accordance with the requirements of this section is determined to be incorrect, the corrected baseline applies ab initio and the annual average standards are deemed to be those applicable under the corrected information.

§ 80.695 How is a benzene baseline determined?

(a) A refinery's or importer's benzene baseline is calculated using the following equation:

$$B_{Base} = \frac{\sum_{i=1}^n (V_i \times B_i)}{\sum_{i=1}^n V_i}$$

Where:

B_{Base} = Benzene baseline value.

V_i = Volume of gasoline batch i produced or imported.

B_i = Benzene content of gasoline batch i produced or imported.

n = Total number of batches of gasoline produced or imported during January 1, 1998 through December 31, 1999.

i = Individual batch of gasoline produced or imported during January 1, 1998 through December 31, 1999.

(b) The calculation at 80.695(a) shall be made separately for each type of gasoline listed at 80.595(a)(2).

(c) Any refinery for which oxygenate blended downstream was included in compliance calculations for 1998-1999, pursuant to § 80.65 or § 80.101(d)(4), must include this oxygenate in the baseline calculations for benzene content under paragraph (a) of this section.

§ 80.700 [Reserved]

§ 80.705 What is the benzene baseline for refineries or importers with incomplete 1998-1999 data?

(a)(1) A refinery or importer must use the methodology specified at 80.695 for determining a benzene baseline if it has benzene measurements on every batch of gasoline produced or imported for 12 or more consecutive months during January 1, 1998 through December 31, 1999.

(2) The determination in paragraph (a)(1) of this section is made separately for each type of gasoline listed at 80.595(a)(2) produced or imported during January 1, 1998 through December 31, 1999.

(3) All consecutive and non-consecutive batch benzene measurements during January 1, 1998 through December 31, 1999 are to be included in the baseline determination, unless the refinery or importer petitions EPA to exclude such data on the basis of data quality, per 80.91(d)(6) and receives permission from EPA to exclude such data.

(b) A refinery or importer that has benzene measurements on every batch of gasoline produced or imported for less than 12 consecutive months during January 1, 1998 through December 31, 1999 shall have the following benzene values as its benzene baseline for the purposes of this subpart:

(1) Reserved.

(2) For conventional gasoline, 1.11 vol% benzene.

§ 80.710-80.725 [Reserved]

Sampling, Testing and Retention Requirements for Refiners and Importers

§ 80.730 What are the sampling and testing requirements for refiners and importers?

(a) Sample and test each batch of gasoline. (1) Beginning January 1, 2002, refiners and importers shall collect a representative sample from each batch of gasoline produced or imported and test each sample to determine its benzene content for compliance with requirements under this subpart prior to the gasoline leaving the refinery or import facility, using the sampling and testing methods provided in this section.

(2) For purposes of meeting the sampling and testing requirements of this section for conventional gasoline, any refiner may, prior to analysis, combine samples of gasoline from more than one batch of gasoline or blendstock and treat such composite sample as one batch of gasoline or blendstock pursuant to the requirements of 40 CFR § 80.101(i)(2).

(3) Any refiner who produces reformulated gasoline or conventional gasoline using computer-controlled in-line blending equipment may meet the testing requirement of paragraph (a)(1) of this section under the terms of an exemption granted under § 80.65(f)(4).

(b) Sampling methods. For purposes of paragraph (a) of this section, refiners and importers shall sample each batch of gasoline by using one of the following methods:

(1) Manual sampling of tanks and pipelines shall be performed according to the applicable procedures specified in one of the two following methods:

(i) American Society for Testing and Materials (ASTM) method D 4057-95, entitled “Standard Practice for Manual Sampling of Petroleum and Petroleum Products.”

(ii) Samples collected under the applicable procedures in ASTM method D 5842-95, entitled “Standard Practice for Sampling and Handling of Fuels for Volatility Measurement,” may be used for measuring benzene content if there is no contamination present that could affect the benzene test result.

(2) Automatic sampling of petroleum products in pipelines shall be performed according to the applicable procedures specified in ASTM method D 4177-95, entitled “Standard Practice for Automatic Sampling of Petroleum and Petroleum Products.”

(c) Test method for measuring the benzene content of gasoline. (1) For purposes of paragraph (a) of this section, refiners and importers shall use the method provided in § 80.46(e) to measure the benzene content of gasoline they produce or import.

(2) Except as provided in § 80.750 and in paragraph (c)(1) of this section, any ASTM benzene test method for liquefied fuels may be used for quality assurance testing under § 80.800, if the protocols of the ASTM method are followed and the alternative method is correlated to the method provided in § 80.46(e).

(d) Incorporations by reference. ASTM standard practices D 4057-95, D 4177-95 and D 5842-95 are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 C.F.R. part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr.,

West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE-131), room M-1500, U.S. Environmental Protection Agency, Docket No. A-97-03, 401 M Street, SW, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

§ 80.735 What gasoline sample retention requirements apply to refiners and importers?

(a) Sample retention requirements. Beginning January 1, 2002, any refiner or importer shall:

(1) Collect a representative portion of each sample of a batch or composite batch analyzed under § 80.730(a), of at least 330 ml in volume;

(2) Retain sample portions for the most recent 20 samples collected, or for each sample collected during the most recent 21 day period, whichever is greater;

(3) Comply with the gasoline sample handling and storage procedures under § 80.730(b) for each sample portion retained; and

(4) Comply with any request by EPA to:

(i) Provide a retained sample portion to the Administrator's authorized representative; and

(ii) Ship a retained sample portion to EPA, within 2 working days of the date of the request, by an overnight shipping service or comparable means, to the address and following procedures specified by EPA, and accompanied with the benzene test result for the sample determined under § 80.730(a).

(b) Sample retention requirement for samples subject to independent analysis requirements. (1) Any refiner or importer who meets the independent analysis requirements under § 80.65(f) for any batch of reformulated gasoline or RBOB will have met the requirements of paragraph (a) of this section, provided the independent laboratory meets the requirements of paragraph (a) of this section for the gasoline batch.

(2) For samples retained by an independent laboratory under paragraph (b) of this section, the test results required to be submitted under paragraph (a) of this section shall be the test results determined under § 80.65(e).

(c) Sampling compliance certification. Any refiner or importer shall include with each annual report filed under § 80.770, the following statement, which must accurately reflect the facts and must be signed and dated by the same person who signs the annual report:

I certify that I have made inquiries that are sufficient to give me knowledge of the procedures to collect and store gasoline samples, and I further certify that the procedures meet the requirements of the ASTM procedures required under § 80.730.

§ 80.740 What requirements apply to refiners producing gasoline by blending blendstocks into previously certified gasoline (PCG)?

(a) Any refiner who produces gasoline by blending blendstock into PCG must meet the requirements of § 80.730 to sample and test every batch of gasoline as follows:

(1) Sample and test to determine the volume and benzene content of the PCG prior to

blendstock blending.

(2) Sample and test to determine the volume and benzene content of the gasoline subsequent to blendstock blending.

(3) Calculate the volume and benzene content of the blendstock, by subtracting the volume and benzene content of the PCG from the volume and benzene content of the gasoline subsequent to blendstock blending. The blendstock is a batch for purposes of compliance calculations and reporting.

(b) In the alternative, a refiner may sample and test each batch of blendstock when received at the refinery to determine the volume and benzene content, and treat each blendstock receipt as a separate batch for purposes of compliance calculations for the annual average benzene standard and for reporting.

§ 80.745 [Reserved]

§ 80.750 What alternative benzene requirements apply to importers who transport gasoline by truck?

Importers who import gasoline into the United States by truck may comply with the following requirements instead of the requirements to sample and test every batch of gasoline under § 80.730.

(a) Standards. The imported gasoline must comply with the applicable average standards under § 80.595(a).

(b) Terminal testing. The importer may use test results for benzene content testing conducted by the terminal operator, for gasoline contained in the storage tank from which trucks used to transport gasoline into the United States are loaded, for purposes of demonstrating compliance with the standards in paragraph (a) of this section, provided the following conditions are met:

(1) The sampling and testing shall be performed after each receipt of gasoline into the storage tank, or immediately before each transfer of gasoline to the importer's truck.

(2) The sampling and testing shall be performed using the methods specified in § 80.730(b) and 80.46(e), respectively.

(3) At the time of each transfer of gasoline to the importer's truck for import to the U.S., the importer must obtain a copy of the terminal test result that indicates the benzene content of the truck load.

(c) Quality assurance program. The importer must conduct a quality assurance program, as specified in this paragraph, for each truck loading terminal.

(1) Quality assurance samples must be obtained from the truck-loading terminal and tested by the importer, or by an independent laboratory, and the terminal operator must not know in advance when samples are to be collected.

(2) The sampling and testing must be performed using the methods specified in § 80.730(b) and 80.46(e), respectively.

(3)(i) The quality assurance test results for benzene must differ from the terminal test result by no more than the ASTM reproducibility of the terminal's test results, as determined by the following equation:

$R = 0.13 (B) + 0.05$, for $0.1 \leq B \leq 1.5$ vol%

$R = 0.28 (B)$, for $B > 1.5$ vol%

Where:

R = ASTM reproducibility.

B = Benzene content based on the terminal's test result.

(ii) For measured benzene levels less than 0.1 vol%, use 0.1 vol% in the equation in paragraph (c)(3)(i) of this section.

(4) The frequency of the quality assurance sampling and testing must be at least one sample for each fifty of an importer's trucks that are loaded at a terminal, or one sample per month, whichever is more frequent.

(d) Party required to conduct quality assurance testing. The quality assurance program under paragraph (c) of this section shall be conducted by the importer. In the alternative, this testing may be conducted by an independent laboratory that meets the criteria under § 80.65(f)(2)(iii), provided the importer receives, no later than 21 days after the sample was taken, copies of all results of tests conducted.

(e) Assignment of batch numbers. The importer must treat each truck load of imported gasoline as a separate batch for purposes of assigning batch numbers and maintaining records under § 80.765, and reporting under § 80.770.

(f) EPA inspections of terminals. EPA inspectors or auditors, and auditors conducting attest engagements under § 80.815, must be given full and immediate access to the truck-loading terminal and any laboratory at which samples of gasoline collected at the terminal are analyzed, and must be allowed to conduct inspections, review records, collect gasoline samples, and perform audits. These inspections or audits may be either announced or unannounced.

(g) Certified Benzene-FRGAS. This section does not apply to Certified Benzene-FRGAS.

(h) Effect of noncompliance. If any of the requirements of this section are not met, all gasoline imported by the truck importer during the time any requirements are not met is deemed in violation of the gasoline benzene average standards in § 80.595, as applicable. Additionally, if any requirement is not met, EPA may notify the importer of the violation and, if the requirement is not fulfilled within 10 days of notification, the truck importer may not in the future use the sampling and testing provisions in this section in lieu of the provisions in § 80.730.

§ 80.755-80.760 [Reserved]

Recordkeeping and Reporting Requirements

§ 80.765 What records must be kept?

(a) Records that must be kept. Beginning January 1, 2002, any person who produces, imports, sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports gasoline, shall keep records that contain the following information:

- (1) The product transfer document information required under §§ 80.77 and 80.106;
- (2) For any sampling and testing for benzene content required under this subpart:

(i) The location, date, time and storage tank or truck identification for each sample collected;

(ii) The name and title of the person who collected the sample and the person who performed the test;

(iii) The results of the test as originally printed by the testing apparatus, or where no printed result is produced, the results as originally recorded by the person who performed the test; and

(iv) Any record that contains a test result for the sample that is not identical to the result recorded under paragraph (a)(2)(iii) of this section.

(b) Additional records that refiners and importers must keep. Beginning January 1, 2002, any refiner for each of its refineries, and any importer for the gasoline it imports, shall keep records that include the following information:

(1) For each batch of gasoline produced or imported:

(i) The batch volume;

(ii) The batch number assigned under § 80.65(d)(3) and the appropriate designation under paragraph (b)(1)(i) of this section; except that if composite samples of conventional gasoline representing multiple batches are tested under § 80.101(i)(2) for anti-dumping compliance purposes, for purposes of this subpart a separate batch number must be assigned to each batch using the batch numbering procedures under § 80.65(d)(3);

(iii) The date of production or importation; and

(iv) If appropriate, the designation of the batch as California gasoline under § 80.625, exempt gasoline for research and development under § 80.780, or for export outside the United States.

(2) The calculations used to determine the applicable baseline under § 80.695.

(3) The calculations used to determine compliance with the applicable benzene average standards of § 80.595.

(4) A copy of all reports submitted to EPA under § 80.770.

(c) Additional records importers must keep. Any importer shall keep records that identify and verify the source of each batch of Certified Benzene-FRGAS and Non-Certified Benzene-FRGAS imported and demonstrate compliance with the requirements for importers under § 80.810(o).

(d) Length of time records must be kept. The records required in this section shall be kept for five years from the date they were created.

(e) Make records available to EPA. On request by EPA the records required in paragraphs (a), (b) and (c) of this section shall be provided to the Administrator's authorized representative. For records that are electronically generated or maintained the equipment and software necessary to read the records shall be made available, or upon approval by EPA, electronic records shall be converted to paper documents which shall be provided to the Administrator's authorized representative.

§ 80.770 What are the benzene reporting requirements?

Beginning with the 2002 averaging period, and continuing for each averaging period thereafter, any refiner or importer shall submit to EPA annual reports that contain the information

required in this section, and such other information as EPA may require.

(a) Refiner and importer annual reports. Any refiner, for each of its refineries and/or aggregate(s) of refineries, and any importer for the gasoline it imports, shall submit a report for each calendar year averaging period that includes the following information for each type of gasoline specified at 80.595(a)(2), as applicable:

- (1) The EPA importer, or refiner and refinery facility registration numbers;
- (2) The applicable standard under § 80.595;
- (3) The total volume of gasoline produced or imported;
- (4) The annual average benzene content of the gasoline produced or imported;
- (5) For each batch of gasoline produced or imported during the averaging period:

(i) The batch number assigned under § 80.65(d)(3) and the appropriate designation under § 80.75; except that if composite samples of conventional gasoline representing multiple batches produced are tested under § 80.101(i)(2) for anti-dumping compliance purposes, for purposes of this subpart a separate batch number must be assigned to each batch using the batch numbering procedures under § 80.65(d)(3);

(ii) The date the batch was produced;

(iii) The volume of the batch; and

(iv) The benzene content of the batch as determined under § 80.730; and

(6) When submitting reports under this paragraph (a) of this section, any importer shall exclude Certified Benzene-FRGAS under § 80.810.

(b) Additional reporting requirements for importers. Any importer shall report the following information for Benzene-FRGAS imported during the averaging period:

(1) The EPA refiner and refinery registration numbers of each foreign refiner and refinery where the Certified Benzene-FRGAS was produced; and

(2) The total gallons of Certified Benzene-FRGAS and Non-Certified Benzene-FRGAS imported from each foreign refiner and refinery.

(c) Report submission. Any annual report required under this section shall be:

(1) Signed and certified as meeting all of the applicable requirements of this subpart by the owner or a responsible corporate officer of the refiner or importer; and

(2) Submitted to EPA no later than the last day of February for the prior calendar year averaging period.

(d) Attest Reports. Attest reports for refiner and importer attest engagements required under § 80.85 shall be submitted to the Administrator by May 31 of each year for the prior calendar year averaging period.

Exemptions

§ 80.775 What if a refiner or importer is unable to produce gasoline conforming to the requirements of this subpart?

In appropriate extreme and unusual circumstances (*e.g.*, natural disaster or Act of God) which are clearly outside the control of the refiner or importer and which could not have been avoided by the exercise of prudence, diligence, and due care, EPA may permit a refiner or

importer, for a brief period, to distribute gasoline which does not meet the requirements of this subpart provided the refiner or importer meets all the criteria, requirements and conditions contained in § 80.73 (a) through (e).

§ 80.780 What are the requirements for obtaining an exemption for gasoline used for research, development or testing purposes?

Any person may request an exemption from the provisions of this subpart for gasoline used for research, development or testing (“R&D”) purposes by submitting to EPA an application that includes all the information listed in paragraph (b) of this section.

(a) Criteria for an R&D exemption. For an R&D exemption to be granted, the proposed test program must:

- (1) Have a purpose that constitutes an appropriate basis for exemption;
- (2) Necessitate the granting of an exemption;
- (3) Be reasonable in scope; and
- (4) Have a degree of control consistent with the purpose of the program and EPA’s monitoring requirements.

(b) Information required to be submitted. To demonstrate each of the four elements in paragraphs (a)(1) through (4) of this section, the application required under this section must include the following information:

(1) A statement of the purpose of the program demonstrating that the program has an appropriate R&D purpose.

(2) An explanation of why the stated purpose of the program cannot be achieved in a practicable manner without performing one or more of the prohibited acts under § 80.785.

(3) To demonstrate the reasonableness of the scope of the program:

- (i) An estimate of the program’s beginning and ending dates;
- (ii) An estimate of the maximum number of vehicles and engines involved in the program, and the number of miles and engine hours that will be accumulated on each;
- (iii) The benzene content of the gasoline expected to be used in the program; and
- (iv) The quantity of gasoline that exceeds the applicable benzene standard that is expected to be used in the program.

(4) With regard to control, a demonstration that the program affords EPA a monitoring capability, including at a minimum:

- (i) A description of the technical and operational aspects of the program;
- (ii) The site(s) of the program (including street address, city, county, state, and zip code);
- (iii) The manner in which information on vehicles and engines used in the program will be recorded and made available to EPA;

(iv) The manner in which results of the program will be recorded and made available to EPA;

(v) The manner in which information on the gasoline used in the program (including quantity, benzene content, name, address, telephone number and contact person of the supplier, and the date received from the supplier), will be recorded and made available to EPA;

(vi) The manner in which distribution pumps will be labeled to insure proper use of the gasoline where appropriate;

(vii) The name, address, telephone number and title of the person(s) in the organization requesting an exemption from whom further information on the application may be obtained; and

(viii) The name, address, telephone number and title of the person(s) in the organization requesting an exemption who is responsible for recording and making available the information specified in paragraphs (b)(4)(iii), (iv) and (v) of this section, and the location in which such information will be maintained.

(c) Additional requirements. (1) The product transfer documents associated with R&D gasoline must identify the gasoline as such, and must state that the gasoline is to be used only for research, development, or testing purposes.

(2) The R&D gasoline must be designated by the refiner or importer as exempt R&D gasoline.

(3) The R&D gasoline must be kept segregated from non-exempt gasoline at all points in the distribution system of the gasoline.

(4) The R&D gasoline must not be sold, distributed, offered for sale or distribution, dispensed, supplied, offered for supply, transported to or from, or stored by a gasoline retail outlet, or by a wholesale purchaser-consumer facility, unless the wholesale purchaser-consumer facility is associated with the R&D program that uses the gasoline.

(d) Memorandum of exemption. The Administrator will grant an R&D exemption upon a demonstration that the requirements of this section have been met. The R&D exemption will be granted in the form of a memorandum of exemption signed by the applicant and the Administrator (or delegate), which may include such terms and conditions as the Administrator determines necessary to monitor the exemption and to carry out the purposes of this section, including restoration of motor vehicle emissions control systems. Any violation of such a term or condition of the exemption or any requirement under this section will cause the exemption to be void ab initio.

(e) Effects of exemption. Gasoline that is subject to an R&D exemption under this section is exempt from other provisions of this subpart provided that the gasoline is used in a manner that complies with the memorandum of exemption granted under paragraph (d) of this section.

Violation Provisions

§ 80.785 What acts are prohibited under the gasoline benzene program?

No person shall:

(a) Averaging violation. Produce or import gasoline that does not comply with the applicable benzene average standard under § 80.595.

(b) Causing an averaging use violation. Cause another person to commit an act in violation of paragraph (a) of this section.

§ 80.790 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?

(a) Compliance with the benzene standards of this subpart shall be determined based on the benzene level of the gasoline, measured using the methodologies specified in §§ 80.730(b)

and 80.46(e). Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the benzene level of gasoline if the evidence or information is relevant to whether the benzene level of gasoline would have been in compliance with the standards if the appropriate sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in §§ 80.46(e) and 80.730(b), business records, and commercial documents.

(b) Determinations of compliance with the requirements of this subpart other than the benzene standards, and determinations of liability for any violation of this subpart, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

§ 80.795 Who is liable for violations under the gasoline benzene program?

(a) Persons liable for violations of prohibited acts.

(1) Averaging violation. Any refiner or importer who violates § 80.785(a) is liable for the violation.

(2) Causing an averaging violation. Any refiner or importer who causes another party to violate § 80.785(a), is liable for a violation of § 80.785(b).

(3) Parent corporation liability. Any parent corporation is liable for any violations of this subpart that are committed by any of its wholly-owned subsidiaries.

(4) Joint venture liability. Each partner to a joint venture is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or is committed by the joint venture operation.

(b) Persons liable for failure to meet other provisions of this subpart. (1) Any refiner or importer who fails to meet a provision of this subpart not addressed in paragraph (a) of this section is liable for a violation of that provision.

(2) Any refiner or importer who caused another person to fail to meet a requirement of this subpart not addressed in subsection (a) of this section, is liable for causing a violation of that provision.

§ 80.800 [Reserved]

§ 80.805 What penalties apply under this subpart?

(a) Any person liable for a violation under § 80.795 is subject to civil penalties as specified in section 205 of the Clean Air Act for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b) Any person liable under § 80.795(a)(1) or (2) for a violation of the applicable benzene averaging standard or causing another party to violate that standard during any averaging period, is subject to a separate day of violation for each and every day in the averaging period.

(c) Any person liable under § 80.795(b) for failure to meet, or causing a failure to meet, a provision of this subpart is liable for a separate day of violation for each and every day such provision remains unfulfilled.

Provisions for Foreign Refiners with Individual Benzene Baselines

§ 80.810 What are the additional requirements for gasoline produced at foreign refineries having individual refiner benzene baselines?

(a) Definitions. (1) A foreign refinery is a refinery that is located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as “the United States”).

(2) A foreign refiner is a person who meets the definition of refiner under § 80.2(i) for a foreign refinery.

(3) "Benzene-FRGAS" means gasoline produced at a foreign refinery that has been assigned an individual refinery benzene baseline under § 80.695 and that is imported into the U.S.

(4) "Non-Benzene-FRGAS" means gasoline that is produced at a foreign refinery that has not been assigned an individual refinery benzene baseline, gasoline produced at a foreign refinery with an individual refinery benzene baseline that is not imported into the United States, and gasoline produced at a foreign refinery with an individual benzene baseline during a year when the foreign refiner has opted to not participate in the Benzene-FRGAS program under paragraph (c)(3) of this section.

(5) "Certified Benzene-FRGAS" means Benzene-FRGAS the foreign refiner intends to include in the foreign refinery's benzene compliance calculations under § 80.605, and does include in these compliance calculations when reported to EPA.

(6) "Non-Certified Benzene-FRGAS" means Benzene-FRGAS that is not Certified Benzene-FRGAS.

(b) Baseline establishment. Any foreign refiner may submit a petition to the Administrator for an individual refinery benzene baseline pursuant to 80.695.

(1) The refiner shall follow the procedures specified in §§ 80.91 through 80.93 to establish the volume and benzene content of gasoline that was produced at the foreign refinery and imported into the United States during 1998 and 1999 for purposes of establishing a benzene baseline under § 80.695.

(2) In making determinations for foreign refinery baselines, EPA will consider all information supplied by a foreign refiner, and in addition may rely on any and all appropriate assumptions necessary to make such determinations.

(3) Where a foreign refiner submits a petition that is incomplete or inadequate to establish an accurate baseline, and the refiner fails to cure this defect after a request for more information, EPA will not assign an individual refinery benzene baseline.

(c) General requirements for foreign refiners with individual refinery benzene baselines. A foreign refiner of a refinery that has been assigned an individual benzene baseline according to § 80.695 must designate all gasoline produced at the foreign refinery that is exported to the United States as either Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS, except as provided in paragraph (c)(3) of this section.

(1) In the case of Certified Benzene-FRGAS, the foreign refiner must meet all provisions that apply to refiners under this subpart I.

(2) In the case of Non-Certified Benzene-FRGAS, the foreign refiner shall meet all the following provisions, except the foreign refiner shall substitute the name Non-Certified Benzene-FRGAS for the names “reformulated gasoline” or “RBOB” wherever they appear in the following provisions:

- (i) The designation requirements in this section.
- (ii) The recordkeeping requirements under § 80.765.
- (iii) The reporting requirements in § 80.770 and this section.
- (iv) The product transfer document requirements in this section.
- (vi) The prohibitions in this section and § 80.785.
- (vii) The independent audit requirements under § 80.815, paragraph (h) of this section, §§ 80.125 through 80.127, § 80.128(a),(b),(c),(g) through (i), and § 80.130.

(3)(i) Any foreign refiner that has been assigned an individual benzene baseline for a foreign refinery under § 80.695 may elect to classify no gasoline imported into the United States as Benzene-FRGAS, provided the foreign refiner notifies EPA of the election no later than November 1 of the prior calendar year.

(ii) An election under paragraph (c)(3)(i) of this section shall:

(A) Apply to an entire calendar year averaging period, and apply to all gasoline produced during the calendar year at the foreign refinery that is used in the United States; and

(B) Remain in effect for each succeeding calendar year averaging period, unless and until the foreign refiner notifies EPA of a termination of the election. The change in election shall take effect at the beginning of the next calendar year.

(d) Designation, product transfer documents, and foreign refiner certification. (1) Any foreign refiner of a foreign refinery that has been assigned an individual benzene baseline must designate each batch of Benzene-FRGAS as such at the time the gasoline is produced, unless the refiner has elected to classify no gasoline exported to the United States as Benzene-FRGAS under paragraph (c)(3)(i) of this section.

(2) On each occasion when any person transfers custody or title to any Benzene-FRGAS prior to its being imported into the United States, it must include the following information as part of the product transfer document information in this section:

(i) Identification of the gasoline as Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS; and

(ii) The name and EPA refinery registration number of the refinery where the Benzene-FRGAS was produced.

(3) On each occasion when Benzene-FRGAS is loaded onto a vessel or other transportation mode for transport to the United States, the foreign refiner shall prepare a certification for each batch of the Benzene-FRGAS that meets the following requirements.

(i) The certification shall include the report of the independent third party under paragraph (f) of this section, and the following additional information:

(A) The name and EPA registration number of the refinery that produced the Benzene-FRGAS;

(B) The identification of the gasoline as Certified Benzene-FRGAS or Non-Certified Benzene-FRGAS;

(C) The volume of Benzene-FRGAS being transported, in gallons;

- (D) In the case of Certified Benzene-FRGAS:
- (1) The benzene content as determined under paragraph (f) of this section; and
 - (2) A declaration that the Benzene-FRGAS is being included in the compliance calculations under § 80.605 for the refinery that produced the Benzene-FRGAS.
- (ii) The certification shall be made part of the product transfer documents for the Benzene-FRGAS.
- (e) Transfers of Benzene-FRGAS to non-United States markets. The foreign refiner is responsible to ensure that all gasoline classified as Benzene-FRGAS is imported into the United States. A foreign refiner may remove the Benzene-FRGAS classification, and the gasoline need not be imported into the United States, but only if:
- (1)(i) The foreign refiner excludes:
 - (A) The volume of gasoline from the refinery's compliance calculations under § 80.605; and
 - (B) In the case of Certified Benzene-FRGAS, the volume and benzene content of the gasoline from the compliance calculations under § 80.605.
 - (ii) The exclusions under paragraph (e)(1)(i) of this section shall be on the basis of the benzene content and volumes determined under paragraph (f) of this section; and
 - (2) The foreign refiner obtains sufficient evidence in the form of documentation that the gasoline was not imported into the United States.
- (f) Load port independent sampling, testing and refinery identification. (1) On each occasion Benzene-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:
- (i) Inspect the vessel prior to loading and determine the volume of any tank bottoms;
 - (ii) Determine the volume of Benzene-FRGAS loaded onto the vessel (exclusive of any tank bottoms present before vessel loading);
 - (iii) Obtain the EPA-assigned registration number of the foreign refinery;
 - (iv) Determine the name and country of registration of the vessel used to transport the Benzene-FRGAS to the United States; and
 - (v) Determine the date and time the vessel departs the port serving the foreign refinery.
- (2) On each occasion Certified Benzene-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:
- (i) Collect a representative sample of the Certified Benzene-FRGAS from each vessel compartment subsequent to loading on the vessel and prior to departure of the vessel from the port serving the foreign refinery;
 - (ii) Prepare a volume-weighted vessel composite sample from the compartment samples, and determine the value for benzene using the methodology specified in § 80.730 by:
 - (A) The third party analyzing the sample; or
 - (B) The third party observing the foreign refiner analyze the sample;
 - (iii) Review original documents that reflect movement and storage of the Certified Benzene-FRGAS from the refinery to the load port, and from this review determine:
 - (A) The refinery at which the Benzene-FRGAS was produced; and
 - (B) That the Benzene-FRGAS remained segregated from:
 - (1) Non-Benzene-FRGAS and Non-Certified Benzene-FRGAS; and

- (2) Other Certified Benzene-FRGAS produced at a different refinery;
- (3) The independent third party shall submit a report:
 - (i) To the foreign refiner containing the information required under paragraphs (f)(1) and (2) of this section, to accompany the product transfer documents for the vessel; and
 - (ii) To the Administrator containing the information required under paragraphs (f)(1) and (2) of this section, within thirty days following the date of the independent third party's inspection. This report shall include a description of the method used to determine the identity of the refinery at which the gasoline was produced, assurance that the gasoline remained segregated as specified in paragraph (n)(1) of this section, and a description of the gasoline's movement and storage between production at the source refinery and vessel loading.
- (4) The independent third party must:
 - (i) Be approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (f);
 - (ii) Be independent under the criteria specified in § 80.65(e)(2)(iii); and
 - (iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities, facilities and documents relevant to compliance with the requirements of this paragraph (f).
- (g) Comparison of load port and port of entry testing. (1)(i) Except as described in paragraph (g)(1)(ii) of this section, any foreign refiner and any United States importer of Certified Benzene-FRGAS shall compare the results from the load port testing under paragraph (f) of this section, with the port of entry testing as reported under paragraph (o) of this section, for the volume of gasoline and the benzene value.
 - (ii) Where a vessel transporting Certified Benzene-FRGAS off loads this gasoline at more than one United States port of entry, and the conditions of paragraph (g)(2)(i) of this section are met at the first United States port of entry, the requirements of paragraph (g)(2) of this section do not apply at subsequent ports of entry if the United States importer obtains a certification from the vessel owner, that meets the requirements of paragraph (s) of this section, that the vessel has not loaded any gasoline or blendstock between the first United States port of entry and the subsequent port of entry.
 - (2)(i) The requirements of this paragraph (g)(2) apply if:
 - (A) The temperature-corrected volumes determined at the port of entry and at the load port differ by more than one percent; or
 - (B) The benzene value determined at the port of entry is higher than the benzene value determined at the load port, and the amount of this difference is greater than the reproducibility amount specified for the port of entry test result by the American Society of Testing and Materials (ASTM).
 - (ii) The United States importer and the foreign refiner shall treat the gasoline as Non-Certified Benzene-FRGAS, and the foreign refiner shall exclude the gasoline volume and properties from its gasoline benzene compliance calculations under § 80.605.
 - (h) Attest requirements. The following additional procedures shall be carried out by any foreign refiner of Benzene-FRGAS as part of the applicable attest engagement for each foreign refinery under § 80.815.
 - (1) The inventory reconciliation analysis under § 80.128(b) and the tender analysis under

§ 80.128(c) shall include Non-Benzene-FRGAS in addition to the gasoline types listed in § 80.128(b) and (c).

(2) Obtain separate listings of all tenders of Certified Benzene-FRGAS, and of Non-Certified Benzene-FRGAS. Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b), and to the volumes determined by the third party under paragraph (f)(1) of this section.

(3) For each tender under paragraph (h)(2) of this section where the gasoline is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of Benzene-FRGAS loaded onto each vessel.

(4) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified Benzene-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(i) Obtain the report of the independent third party, under paragraph (f) of this section, and of the United States importer under paragraph (o) of this section.

(A) Agree the information in these reports with regard to vessel identification, gasoline volumes and test results.

(B) Identify, and report as a finding, each occasion the load port and port of entry parameter and volume results differ by more than the amounts allowed in paragraph (g) of this section, and determine whether the foreign refiner adjusted its refinery calculations as required in paragraph (g) of this section.

(ii) Obtain the documents used by the independent third party to determine transportation and storage of the Certified Benzene-FRGAS from the refinery to the load port, under paragraph (f) of this section. Obtain tank activity records for any storage tank where the Certified Benzene-FRGAS is stored, and pipeline activity records for any pipeline used to transport the Certified Benzene-FRGAS, prior to being loaded onto the vessel. Use these records to determine whether the Certified Benzene-FRGAS was produced at the refinery that is the subject of the attest engagement, and whether the Certified Benzene-FRGAS was mixed with any Non-Certified Benzene-FRGAS, Non-Benzene-FRGAS, or any Certified Benzene-FRGAS produced at a different refinery.

(5)(i) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified and Non-Certified Benzene-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(ii) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure of the vessel, and the port of entry and date of arrival of the vessel. Agree the vessel's departure and arrival locations and dates from the independent third party and United States importer reports to the information contained in the commercial document.

(6) Obtain separate listings of all tenders of Non-Benzene-FRGAS, and perform the following:

(i) Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b).

(ii) Obtain a separate listing of the tenders under paragraph (h)(6) of this section where the gasoline is loaded onto a marine vessel. Select a sample from this listing in accordance with

the guidelines in § 80.127, and obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the gasoline was off loaded for the selected vessels. Determine and report as a finding the country where the gasoline was off loaded for each vessel selected.

(7) In order to complete the requirements of this paragraph (h) an auditor shall:

(i) Be independent of the foreign refiner;

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in § 80.125 through 130 and this paragraph (h); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities and documents relevant to compliance with the requirements of §§ 80.125 through 80.130, § 80.815 and this paragraph (h).

(i) Foreign refiner commitments. Any foreign refiner shall commit to and comply with the provisions contained in this paragraph (i) as a condition to being assigned an individual refinery benzene baseline.

(1) Any United States Environmental Protection Agency inspector or auditor will be given full, complete and immediate access to conduct inspections and audits of the foreign refinery.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where:

(A) Gasoline is produced;

(B) Documents related to refinery operations are kept;

(C) Gasoline or blendstock samples are tested or stored; and

(D) Benzene-FRGAS is stored or transported between the foreign refinery and the United States, including storage tanks, vessels and pipelines.

(iii) Inspections and audits may be by EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits will be provided to an EPA inspector or auditor on request.

(v) Inspections and audits by EPA may include review and copying of any documents related to:

(A) Refinery baseline establishment, including the volume and benzene content, and transfers of title or custody, of any gasoline or blendstocks, whether Benzene-FRGAS or Non-benzene-FRGAS, produced at the foreign refinery during the period January 1, 1998 through the date of the refinery baseline petition or through the date of the inspection or audit if a baseline petition has not been approved, and any work papers related to refinery baseline establishment;

(B) The volume and benzene content of Benzene-FRGAS;

(C) The proper classification of gasoline as being Benzene-FRGAS or as not being Benzene-FRGAS, or as Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS;

(D) Transfers of title or custody to Benzene-FRGAS;

(E) Sampling and testing of Benzene-FRGAS;

(F) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section and § 80.815 including work papers; and

(G) Reports prepared for submission to EPA, and any work papers related to such reports.
(vi) Inspections and audits by EPA may include taking samples of gasoline or blendstock, and interviewing employees.

(vii) Any employee of the foreign refiner will be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents will be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters will be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia will be named, and service on this agent constitutes service on the foreign refiner or any employee of the foreign refiner for any action by EPA or otherwise by the United States related to the requirements of this subpart H.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign refiner or any employee of the foreign refiner related to the provisions of this section.

(5) Submitting a petition for an individual refinery benzene baseline, producing and exporting gasoline under an individual refinery benzene baseline, and all other actions to comply with the requirements of this subpart H relating to the establishment and use of an individual refinery benzene baseline constitute actions or activities that satisfy the provisions of 28 U.S.C. section 1605(a)(2), but solely with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart H, including conduct that violates Title 18 U.S.C. section 1001 and Clean Air Act section 113(c)(2).

(6) The foreign refiner, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(7) The commitment required by this paragraph (i) shall be signed by the owner or president of the foreign refiner business.

(8) In any case where Benzene-FRGAS produced at a foreign refinery is stored or transported by another company between the refinery and the vessel that transports the Benzene-FRGAS to the United States, the foreign refiner shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (i)(1) through (7) of this section, and these commitments shall be included in the foreign refiner's baseline petition.

(j) Sovereign immunity. By submitting a petition for an individual foreign refinery baseline under this section, or by producing and exporting gasoline to the United States under an individual refinery benzene baseline under this section, the foreign refiner, its agents and employees, without exception, become subject to the full operation of the administrative and

judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under 40 C.F.R. Part 80, subpart H, including conduct that violates Title 18 U.S.C. section 1001 and Clean Air Act section 113(c)(2).

(k) Bond posting. Any foreign refiner shall meet the requirements of this paragraph (k) as a condition to being assigned an individual refinery benzene baseline.

(1) The foreign refiner shall annually post a bond of the amount calculated using the following equation:

$$Bond = G \times \$ 0.01$$

Where:

Bond = amount of the bond in U. S. dollars

G = the largest volume of gasoline produced at the foreign refinery and exported to the United States, in gallons, during a single calendar year among the five preceding calendar years.

(2) Bonds shall be posted by:

(i) Paying the amount of the bond to the Treasurer of the United States;

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third party and the nature of the surety agreement; or

(iii) An alternative commitment that results in assets of an appropriate liquidity and value being readily available to the United States, provided EPA agrees in advance as to the alternative commitment.

(3) If the bond amount for a foreign refinery increases, the foreign refiner shall increase the bond to cover the shortfall within 90 days of the date the bond amount changes. If the bond amount decreases, the foreign refiner may reduce the amount of the bond beginning 90 days after the date the bond amount changes.

(4) Bonds posted under this paragraph (k) shall:

(i) Be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of this subpart H, including where such conduct violates Title 18 U.S.C. section 1001 and Clean Air Act section 113(c)(2),

(ii) Be provided by a corporate surety that is listed in the United States Department of Treasury Circular 570 “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds”, and

(iii) Include a commitment that the bond will remain in effect for at least five (5) years following the end of latest averaging period that the foreign refiner produces gasoline pursuant to the requirements of this Subpart I.

(5) On any occasion a foreign refiner bond is used to satisfy any judgment, the foreign refiner shall increase the bond to cover the amount used within 90 days of the date the bond is used.

(l) [Reserved]

(m) English language reports. Any report or other document submitted to EPA by an foreign refiner shall be in English language, or shall include an English language translation.

(n) Prohibitions. (1) No person may combine Certified Benzene-FRGAS with any Non-Certified Benzene-FRGAS or Non-Benzene-FRGAS, and no person may combine Certified Benzene-FRGAS with any Certified Benzene-FRGAS produced at a different refinery, until the importer has met all the requirements of paragraph (o) of this section, except as provided in paragraph (e) of this section.

(2) No foreign refiner or other person may cause another person to commit an action prohibited in paragraph (n)(1) of this section, or that otherwise violates the requirements of this section.

(o) United States importer requirements. Any United States importer shall meet the following requirements.

(1) Each batch of imported gasoline shall be classified by the importer as being Benzene-FRGAS or as Non-Benzene-FRGAS, and each batch classified as Benzene-FRGAS shall be further classified as Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS.

(2) Gasoline shall be classified as Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS according to the designation by the foreign refiner if this designation is supported by product transfer documents prepared by the foreign refiner as required in paragraph (d) of this section, unless the gasoline is classified as Non-Certified Benzene-FRGAS under paragraph (g) of this section.

(3) For each gasoline batch classified as Benzene-FRGAS, any United States importer shall perform the following procedures.

(i) In the case of both Certified and Non-Certified Benzene-FRGAS, have an independent third party:

(A) Determine the volume of gasoline in the vessel;

(B) Use the foreign refiner's Benzene-FRGAS certification to determine the name and EPA-assigned registration number of the foreign refinery that produced the Benzene-FRGAS;

(C) Determine the name and country of registration of the vessel used to transport the Benzene-FRGAS to the United States; and

(D) Determine the date and time the vessel arrives at the United States port of entry.

(ii) In the case of Certified Benzene-FRGAS, have an independent third party:

(A) Collect a representative sample from each vessel compartment subsequent to the vessel's arrival at the United States port of entry and prior to off loading any gasoline from the vessel;

(B) Prepare a volume-weighted vessel composite sample from the compartment samples; and

(C) Determine the benzene value using the methodologies specified in § 80.730, by:

(1) The third party analyzing the sample; or

(2) The third party observing the importer analyze the sample.

(4) Any importer shall submit reports within thirty days following the date any vessel transporting Benzene-FRGAS arrives at the United States port of entry:

(i) To the Administrator containing the information determined under paragraph (o)(3) of this section; and

(ii) To the foreign refiner containing the information determined under paragraph (o)(3)(ii) of this section.

(5) Any United States importer shall meet the requirements specified in § 80.595 for any imported gasoline that is not classified as Certified Benzene-FRGAS under paragraph (o)(2) of this section.

(p) Truck Imports of Certified Benzene-FRGAS produced at a Refinery (1) Any refiner whose Certified Benzene-FRGAS is transported into the United States by truck may petition EPA to use alternative procedures to meet the following requirements:

- (i) Certification under paragraph (d)(5) of this section;
- (ii) Load port and port of entry sampling and testing under paragraphs (f) and (g) of this section;
- (iii) Attest under paragraph (h) of this section; and
- (iv) Importer testing under paragraph (o)(3) of this section.

(2) These alternative procedures must ensure Certified Benzene-FRGAS remains segregated from Non-Certified Benzene-FRGAS and from Non-Benzene-FRGAS until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses the following:

- (i) Provisions for monitoring pipeline shipments, if applicable, from the refinery, that ensure segregation of Certified Benzene-FRGAS from that refinery from all other gasoline;
- (ii) Contracts with any terminals and/or pipelines that receive and/or transport Certified Benzene-FRGAS, that prohibit the commingling of Certified Benzene-FRGAS with any of the following:

- (A) Other Certified Benzene-FRGAS from other refineries.
- (B) All Non-Certified Benzene-FRGAS.
- (C) All Non-Benzene-FRGAS.

(iii) Procedures for obtaining and reviewing truck loading records and United States import documents for Certified Benzene-FRGAS to ensure that such gasoline is only loaded into trucks making deliveries to the United States;

(iv) Attest procedures to be conducted annually by an independent third party that review loading records and import documents based on volume reconciliation, or other criteria, to confirm that all Certified Benzene-FRGAS remains segregated throughout the distribution system and is only loaded into trucks for import into the United States.

(3) The petition required by this section must be submitted to EPA along with the application for small refiner status and individual refinery benzene baseline and standards under § 80.240 and this section.

(q) Withdrawal or suspension of a foreign refinery's baseline. EPA may withdraw or suspend a baseline that has been assigned to a foreign refinery where:

- (1) A foreign refiner fails to meet any requirement of this section,
- (2) A foreign government fails to allow EPA inspections as provided in paragraph (i)(1) of this section;
- (3) A foreign refiner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart H; or
- (4) A foreign refiner fails to pay a civil or criminal penalty that is not satisfied using the

foreign refiner bond specified in paragraph (k) of this section.

(r) Early use of a foreign refinery baseline. (1) A foreign refiner may begin using an individual refinery baseline before EPA has approved the baseline, provided that:

(i) A baseline petition has been submitted as required in paragraph (b) of this section;
(ii) EPA has made a provisional finding that the baseline petition is complete;
(iii) The foreign refiner has made the commitments required in paragraph (i) of this section;

(iv) The persons who will meet the independent third party and independent attest requirements for the foreign refinery have made the commitments required in paragraphs (f)(3)(iii) and (h)(7)(iii) of this section; and

(v) The foreign refiner has met the bond requirements of paragraph (k) of this section.

(2) In any case where a foreign refiner uses an individual refinery baseline before final approval under paragraph (r)(1) of this section, and the foreign refinery baseline values that ultimately are approved by EPA are more stringent than the early baseline values used by the foreign refiner, the foreign refiner shall recalculate its compliance, ab initio, using the baseline values approved by EPA, and the foreign refiner shall be liable for any resulting violation of the gasoline benzene requirements.

(s) Additional requirements for petitions, reports and certificates. Any petition for a refinery baseline under § 80.695, any alternative procedures under paragraph (r) of this section, any report or other submission required by paragraphs (c), (f)(2), or (i) of this section, and any certification under paragraph (d)(3) of this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may specified by the Administrator.

(2) Be signed by the president or owner of the foreign refiner company, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) that I have actual authority to sign on behalf of and to bind [insert name of foreign refiner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 C.F.R. Part 80, subpart I and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.

I affirm that I have read and understand the provisions of 40 C.F.R. Part 80, subpart I, including 40 C.F.R. § 80.810 [insert name of foreign refiner]. Pursuant to Clean Air Act section 113(c) and Title 18, United States Code, section 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000, and/or imprisonment for up to five years.

Attest Engagements

§ 80.815 What are the attest engagement requirements for gasoline benzene compliance applicable to refiners and importers?

In addition to the requirements for attest engagements that apply to refiners and importers under §§ 80.125 through 80.130, and § 80.810, the attest engagements for refiners and importers must include the following procedures and requirements each year.

(a) Baseline. (1) Obtain the EPA benzene baseline approval letter for the refinery to determine the refinery's applicable benzene baseline and baseline volume under § 80.695.

(2) Obtain a written representation from the company representative stating the benzene value that the company used as its baseline and agree that number to paragraph (a)(1) of this section and to the reports to EPA.

(b) EPA reports. (1) Obtain and read a copy of the refinery's or importer's annual benzene reports filed with EPA for the year.

(2) Agree the yearly volume of gasoline reported to EPA in the benzene reports with the inventory reconciliation analysis under § 80.128.

(3) Calculate the annual average benzene level for all gasoline and agree that value with the value reported to EPA.

§80.820 [Reserved]

Additional Rulemaking

§80.825 What additional rulemaking will EPA conduct?

No later than December 31, 2003, the Administrator shall propose any requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels that the Administrator determines are appropriate pursuant to section 202(l)(2) of the Act. The Administrator shall take final action on the proposal no later than December 30, 2004.

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

1. The authority citation for part 86 is revised to read as follows:

Authority: 42 U.S.C. 7401-7671q, including 42 U.S.C. 7521(l).